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AUTHOR Petersen, Deborah
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ABSTRACT

The effectiveness of Section 315 of the Communications Act of 1934 and its 1959 amendments, which allows "equal broadcast time" to opposing political candidates, is assessed in terms of insuring the public's right to know and of the broadcasters' claim to First Amendment protection. Questions regarding the regulation's structure and purpose are outlined as a means for determining the policy agenda for the future on this particular issue. A historical perspective is used in tracing the evolution of Section 315 and the reactions by lawyers and broadcasters to changes in it. In addition, arguments favoring its repeal and those favoring its maintenance are evaluated. The paper concludes that in light of the ineffectiveness of the regulation in accomplishing what it was designed to do, it should be abolished. (Author/HTH)

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Section 315, the 1959 Amendments and Political Equality

Deborah Petersen
Division of Broadcasting
102 Old Armory
The University of Iowa
Iowa City, Iowa 52242

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Introduction

Section 315 of the Communications Act and the Fairness Doctrine which it codifies are two of the biggest regulatory thorns in the sides of broadcasters. With cries of First Amendments violations, the broadcasters assert that their coverage of controversial issues and political campaigns would be much more expansive and of greater value to the audience they serve if they were free from the shackles of this portion of the statute. The truth of this assertion is somewhat dubious at best. Nevertheless, it is important to investigate any claim of abridgment of constitutional freedoms so that these freedoms may be protected and maintained. Upon closer examination, one recognizes an extremely interesting paradox existent within this debate. Both sides claim First Amendment privileges. The side in favor of maintaining Section 315 claims that the public's right to know is more important, and those who want the section repealed claim the right to freedom of the press is damaged. In order to untangle this net of intertwining ideals, we must first look at the rationale behind the regulation.

The fiduciary concept of broadcast regulation in America was derived partially from the fear that a major channel of mass communication would become a monopoly.[1] Because the broadcaster is a trustee, Congress has determined that the licensee cannot also be an advocate. Hence, Section 315 states: "If a station permits a legally qualified candidate to use its facilities, it must afford "equal opportunities" to all other

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[1]National Broadcasting Co., Inc., et al. v. United States et al., 319 U.S. 190, May 10, 1943. (Otherwise known as the Network Case.)

legally qualified candidates for the same office."[2] To complicate matters further, Section 312 (a) (7) (an amendment added in 1971 to comply with the Federal Election Campaign Act) has implicit in its content a provision for allowing all federal candidates access to air time. The FCC has somewhat ameliorated this conflict by recognizing that where there is a multiplicity of candidates, it may be impossible to afford all legally qualified candidates reasonable opportunity.

Section 312 (a) (7) is, in effect, an access clause, while 315 is a provision to insure fairness in treatment: once services have been offered to one candidate, they must be offered to all. Section 315, as mentioned above, also provides statutory affirmation of the Fairness Doctrine. The Fairness Doctrine is, at one and the same time, both an access requirement (public's right to information via an affirmative obligation to cover controversial issues of public importance) and a fair treatment provision (allowing for a reasonable opportunity for opposing viewpoints to be heard). An important constitutional consideration is that although the First Amendment provides for freedom of speech (in the sense that anyone can start a newspaper) nowhere is there an indication of a right of access to any given means of communication. In fact, in terms of the printed media, the Supreme Court in Miami Herald Publishing Co. v. Tornillo (418 U.S. 241, 94 S.Ct. 2831, 41 L.Ed. 2d 730 (1974) denied that a right of access existed. It is ponderous then to consider that broadcasters are mandated to provide political candidates with this extraordinary privilege.

Let us turn back to this rationale of non-advocacy. In a sense, these sections mirror the philosophical basis for the First Amendment

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[2]Public Law 416, 73d Congress, June 19, 1973 (Amended to January 1969).

of the United States Constitution. Relying heavily on John Stuart Mill's notion of the marketplace of ideas, the framers of the Constitution argued that, as in the economy, ideas should be exchanged on a free and open basis without fear of governmental reprimand. Anne Branscomb noted in a 1961 evaluation of 315 that "there is inherent in the democratic society the concept of equal access by political candidates to the electorate. Minority candidates must be allowed to express their opinions."[3]

Although the authors of the Federal Radio Act of 1927 were operating under technological considerations when they allocated frequencies, they more or less determined the economic basis for the broadcasting industry. By emphasizing localism, the FCC ensured a large number of stations covering smaller geographical areas. It might have been quite different today if they had allowed for the development of fewer stations covering larger areas. As a result of their chosen path, the FCC created a system of two operative economies. An economy of scale made the networks brokers for an economy of production and distribution.[4] It is this brokerage function which validates the need for Section 315 and the Fairness Doctrine. Afterall, if a monopoly (or an oligopoly consisting of three entities) is controlling the programming fare for the entire country, how else can a multiplicity of viewpoints be insured? Addressing this

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[3]Anne Branscomb, "Should Political Broadcasting Be Fair or Equal? A Reappraisal of Section 315 of the Federal Communications Act," 30 George Washington Law Review 63 (October 1961). Richard Singer has suggested that "the regulatory history of Section 315 is virtually barren of any indication of clear intent as to the primary purpose and philosophy underlying this section. While the scant material is somewhat ambiguous, it appears that the section was primarily meant to protect minority candidates." "The FCC and Equal Time," 27 Md. L. Rev. 221 (Summer 1967).

[4]Professor Dorsey Ellis, Mass Comm. Law lecture, University of Iowa Law School, April 15, 1980.

point in yet another way, Stanley Kelley has suggested that "it is this ability of media personnel to determine media content that makes them political actors in their own right."[5]

As mass communication technology develops and expands the number of channels available to the receiving audience, it would seem that the need for the Fairness Doctrine and Section 315 becomes less acute. If we were to draw an analogy between the frequency spectrum and another natural resource, say Iowa farm land, how could we justify regulation over the use of one, but not the other? Granted we need to have some means of controlling the allocation of the resource so as to prevent interference, but do we tell the farmer what crops to plant or what animals to raise? Obviously, there are some constraints, but this is not general practice. Marketplace forces determine what goods will be grown via the law of supply and demand. To a large extent, we can argue in the same way when we talk about broadcasting via a multiplicity of channels. We can have all-news stations only if the market allows it. Given the economic model under which the First Amendment was drawn, it appears to be logical and consistent to call for the repeal of Section 315 and 312 (a) (7), and as a result, the Fairness Doctrine. Before any concrete proposals are drawn up however, we must look at 315 and ask a few questions:

1) What are the goals that are sought to be achieved by the regulation?
2) What is the hidden agenda of the regulation?
3) Do these goals change over time?
4) Do the regulations achieve what they set out to do?

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[5]Stanely Kelley, "Elections and the Mass Media," 27 Law and Contemporary Problems," 307 (1963).

5) Are these goals furthered by the regulation, or would they be better served through other means?
6) What is the balance between costs and benefits?[6]

The answers to these questions should provide us with a solution to the dilemma over whether or not Section 315 should be repealed.

Methodology

I believe the answers to the six questions enumerated above might lie with the 1959 amendments to Section 315. These amendments, in effect, were a recognition of the fact that Section 315 was not providing reasonable opportunity to all legally qualified candidates to let their views be heard.

I intend to describe first the historical overview of events leading up to passage of the 1959 amendments (specifically the Eisenhower Middle Eastern Crisis Speech, the Allen Blondy decision, and the Lar Daly ruling). Secondly, I will evaluate the reaction and speculation about the amendments and the subsequent effect on 315 as covered by law journals during the 1960's. Thirdly, I will cover the 1970's industry perspective on 315. I will conclude with an analysis of the arguments for the various proposals for the future of Section 315, and make some recommendations of my own.

Historical Overview

Samuel Becker hypothesized that "radio and television have contributed significantly in the past sixty years to the shift in

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[6]Professor Dorsey Ellis, Mass Comm. Law Lecture, University of Iowa Law School, April 15, 1980.

balance of power from Congress to the President."[7] Later in this review of presidential use of broadcasting, Becker retraces the development of Section 315 of the Communications Act. Broadcasters tended to respond differently to requests for air time by Congressmen and to requests from the President. By the 1930's, the air time available was going at premium prices to the highest bidder. Perhaps it was out of a sense of respect for the high office of the President, but it was also a factor of numbers that broadcasters were far more willing to defer to one President than they were to many Congressmen. Becker also points out the nature of the medium was more conducive to the association of an issue with a single individual (i.e., the President) than it was to allowing for this same kind of identification with a large body of men such as the Congress. At any rate, Section 315 can be seen as a response to this fear of being overshadowed by the President on a grand scale, and being shut out by advertisers in competition for air time. In a sense, then, this provides us with an answer to the second question posed at the end of the Introduction. The hidden agenda of Section 315 was, to a large extent, to provide Congressmen with a more effective means of communication with their constituents.

On October 31, 1956 (just six days before the Presidential election) President Eisenhower delivered a "non-political" (Eisenhower's term) address on the Middle Eastern crisis. Eisenhower's opponent (Adlai Stevenson) requested and was unofficially granted equal time by the networks. The FCC responded negatively to the request: "We do not

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[7] Samuel Becker, "Presidential Power: The Influence of Broadcasting," Quarterly Journal of Speech 4 (1961): 16. Stanley Kelley echoes this idea: "The decline of the machine and the increasing dependence of politicians on the media . . . has meant a gradual shift in American political life from the politics of personal favors toward a politics of issues and images."

believe that when Congress enacted Section 315 it intended to grant equal time to all presidential candidates when the President uses air time in reporting to the nation on an international crisis."[8] It is important to note that this is not in statutory terms, rather it merely points out that Section 315 at this time "expressed no standards for determining what constitutes "use" by a "legally qualified candidate" such as will entitle other such candidates to equal opportunities."[9] The FCC abdicated the responsibility of defining "use."

A second example of FCC unwillingness to come to terms with defining Section 315 is the Allen Blondy decision. Blondy made the request for equal opportunity when his opponent, a judge, was shown in a film clip as he was sworn into office. The FCC decided that this film clip was not "use" because the candidate had "in no way initiated either the filming or presentation of the event."[10] In fact, there seems to be evidence that the interpretation of what was not "use" in Blondy seems consistent with the intentions of the framers of the Communications Act of 1934.[11] Hence, the FCC took to defining what was not "use."

The FCC's rationale in both decisions is based on the message's intention (e.g., if it is delivered in an official capacity it would seem logical or reasonable to not grant access). This "logic" or "reason" was completely obliterated however with the Lar Daly decision. Lar Daly was a perennial candidate for many offices -- from Mayor of Chicago to

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[8]Columbia Broadcasting System, 14 R.R. 720 (1956).

[9]"FCC Rules that President's Report on International Crisis does not Entitle Opposition Candidates to Equal Air Time Under Section 315 of Communications Act," 105 University of Penn. L. Rev. 701-702 (March 1957).

[10]Branscomb, "Should Political Broadcasting Be Fair or Equal?" p. 70.

[11]Ibid., p. 66.

President of the United States. Daly demanded equal time as a legally qualified candidate to counter appearances of Mayor Richard Daley as covered on the local evening news. The coverage in question consisted of making a promotional announcement for the March of Dimes and welcoming the President of Argentina to Chicago. The FCC held that these appearances by Richard Daley constituted "use." This decision was interpreted as meaning that an incumbent running for office could not be covered while performing the duties of the office to which he/she was elected, unless equal time was provided all opposing candidates. The networks and stations were outraged. They argued that this would severely hamper their ability to cover the news in general, and the election campaign in particular. CBS brought suit and Congress responded by approving a series of recommendations which had been rejected in 1956. The recommendations, which amended the Section, exempted bona fide newscasts, news interviews, news documentaries, and on-the-spot news coverage (which included political conventions). The criteria for the news exemptions are:

1) Is the program regularly scheduled?
2) What is the format, nature and content of the program?
3) Whether the format, nature of the program has changed since its inception and, if so, in what respects?
4) Who initiates the program?
5) Who produces and controls the program?
6) When was the program initiated?[12]

Along with the news exemptions, Senator William Proxmire argued for an attachment to the amendments which read:[13]

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[12]John Dean, "Political Broadcasting: The Communication Act of 1934 Reviewed," 20 Fed'l Comm. Bar Journal 27 (1966).

[13]Frank J. Kahn reports that Proxmire attached the ammendment. Branscomb states that the amendment was attached at the suggestion of the Attorney General. Documents of American Broadcasting, 2d ed., (New York: Appleton-Century-Crofts, 1973), p. 422.

> Nothing in the foregoing sentence shall be construed as relieving broadcasters in connection with the presentation of newscasts, news interviews, news documentaries, and on-the-spot coverage of news events from the obligation imposed upon them under this Act to operate in the public interest and afford reasonable opportunity for the discussion of conflicting views on issues of public importance.[14]

This statement serves as legislative affirmation of the Fairness Doctrine. To a degree this clause was a necessary counter-balance to the news exemptions -- if the intent of balance implicit within 315 was to be maintained. The effect of this attachment extended the notion of fairness to general coverage of political events (e.g., if a partisan speech is covered, there becomes an affirmative responsibility on the part of broadcasters to seek out the opposing points of view).

These amendments engendered a good deal of reaction and speculation as to the future of political broadcasting. The 1960 presidential election was imminent and, given the limitations of the exemptions, a temporary suspension had to be enforced so that the debates between Richard Nixon and John Kennedy could take place. Interested observers took it upon themselves to evaluate the nature of political broadcasting, especially in light of these amendments. The following section represents a selection of the most-often cited studies on the attributes and shortcomings of the amendments.

Evaluation of 315 During the 1960's

Remedies

The remedies available to a candidate complaining of unfair coverage by a station are highly unsatisfactory. Under these amendments, a legally qualified candidate may seek administrative recourse only if

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[14] Branscomb, "Should Political Broadcasting Be Fair or Equal?" p. 72.

a station has allowed an opposing candidate political use of air time. The station may choose to ignore a political campaign (in spite of Section 312 (a) (7) by simply filing an explanation with the FCC as to why it chose not to do so.

The FCC has never revoked a license for unfair political broadcasting. There is no evidence that the FCC has ever issued a cease and desist order for violations of 315. There is no evidence of a fine ever being imposed on a station for failure to comply with the political broadcast coverage requirements of 315.

Because of this rather "toothless" set of FCC reprimands, the response to the question of whether or not the regulations achieve what they set out to do (from the six questions at the end of the Introduction) would have to be answered negatively. If, on the other hand, one were to examine the results of the Fairness provision of the 1959 amendments, the response to this question would be quite different. The two most important cases in this area are Red Lion and the United Church of Christ case.

Fairness Challenges

In the first instance, Red Lion serves as judicial affirmation of the Fairness Doctrine and answers the dilemma of whether or not First Amendment protections should be afforded broadcasters. Justice White's majority opinion states that certain First Amendment rights do belong to broadcasters, but that these rights must be limited[15] as the technological capabilities of the broadcasting media are limited in presenting a multiplicity of viewpoints.

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[15]United States v. Paramount Pictures, Inc. 334 U.S. 131, 166 (1948).

As I explained earlier in this paper, the technological developments of the past two decades defuse this argument of limitations. The extent to which these limitations are invalidated is a question which probably cannot be answered until these developments are in full operation. This uncertainty may serve as a justification for maintaining 315 for the meantime, but all indications point to the invalidity of this assumption. The sheer number of radio stations as compared with newspapers suggests that the time may have already come to repeal Section 315.

Before we throw full support behind repeal, we must evaluate the case of the Office of Communication of the United Church of Christ v. WLBT. Although this case is known as the first judicial recognition of public (narrowly defined) standing in a license reneweal process, the Fairness Doctrine played an important role in providing this public group with a foot in the door of the FCC. The complainant (Office of Communication of the United Church of Christ) brought suit against WLBT on the basis of a series of fairness violations. Ever since WLBT went on the air, it had served as a tool for promoting racist ideals. The petition for denial filed by UCC cited unbalanced programming in terms of the ratio of entertainment programs and commercials to the presentation of programs depicting controversial issues of public importance. UCC also noted that when public issues were raised they were blatantly one-sided. Further, forty five percent of the population (the black community) was blatantly ignored in the programming of the station. In response to the Commission's negligence in this case (renewal of WLBT's license and denial of standing to UCC) the court emphasized the importance of the public representing the public's interest (rather than a private party claiming economic or technological injury on behalf of the public). Although this type of case is extremely rare, the importance of the issues raised brings us back

to the notion that minority points of view deserve to be aired. If our laws permit marketplace forces to drown these points of view, we are in effect negating one of the major premises of democracy (as interpreted earlier by Anne Branscomb).

This particular case sheds a different light on the answers to two of the questions posed in the Introduction. One of the goals of this statute is to insure fair presentation of issues. Minority points of view (and in terms of politics -- coverage of candidates' campaigns) are especially important to our system of government. We cherish the individual's right to speak his/her mind regardless of whether or not we agree with it.

One could argue that the regulations did not directly achieve what they set out to do. The FCC was forced by a court decision to uphold the values of fairness. Also, it could be that this goal of a multiplicity of viewpoints could be accomplished simply through the variety of channels of communication available as a result of new technologies. Nevertheless, UCC v. WLBT is an instance of the Fairness Doctrine serving the general public interest.

Political Fairness

Returning to the provision for political fairness via 315, we note that the effectiveness of the regulation presents a much different balance between the costs and benefits of the regulation. The 1959 amendments have, in effect, negated the goal of equal opportunities for all political candidates. The 1959 amendments enable "the party in power to both manipulate and saturate the news."[16] This incumbent

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[16] John W. Dean, III, "Political Broadcasting: The Communications Act of 1934 Reviewed," 20 Fed'l Comm. Bar Journal 42 (1966).

advantage is even more pronounced in presidential races. As Becker and Kelley have suggested (cited in the Historical Overview section of this paper), the power of the President had steadily increased along with the rise of the electronic mass media. John Dean points out (rather ironically, I might add) that "whatever the President says or does is a major news story."[17]

Dean suggests two other problems which arise from these 1959 amendments. The news exemptions make the Fairness Doctrine applicable in all stories which fall under the specified categories. The controversial issue standard of the Fairness Doctrine has never been adequately defined, although the personal attack principle certainly falls within the realm of controversy. Dean finds the second problem within the exemptions themselves. Excluded from exemption are debates, discussions, and forums. Dean suggests that this omission provides for inconsistency in application of the exemptions.

Another inconsistency of the amendment is illustrated by the NBC case where the FCC determined that the Today show was exempt from 315 requirements, while the Tonight show was not. The commission based its reasoning on the fact that the Tonight show was listed as a variety program log while the Today show was not listed at all.[18]

An even more ludicrous inconsistency existed (it has been changed) in the FCC's distinction between the Today show and Good Morning America. The former is produced by the news division, and hence was exempt, while the latter comes out of the entertainment division, and therefore was not covered by the exemption.

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[17] Ibid.

[18] Richard Singer, "The FCC and Equal Time: Never-Neverland Revisited," 27 Md. L. Rev. 233 (Summer 1967).

The problems inherent in the 1959 amendments which have since found remedies include:

1) "The fact that broadcasters were always able to indulge in some favoritism . . . through the presentation of spokesmen rather than candidates."[19]
2) The excessive costs of campaigning which might preclude certain viable candidates from running, and potentially obliterating the chances of minority candidates.

The first problem has been somewhat alleviated by the Zapple Doctrine which allows for equal time for an opposing candidate's spokesmen if a request is filed for within a certain time period. The second problem is addressed by the Federal Election Campaign Act of 1971. The funding problem will never be completely solved, but it has been recognized as having serious implications for the future of our political system and I'm sure it will continue to be a matter of great concern in the future.

The 1970's saw a continuation of many of these same concerns. Broadcasters gained greater support for repeal of Section 315 both within the FCC and the Congress. New rules covering the debates arose as a result of the Aspen Institute proposals adapted by the FCC in 1975. Broadcasters raise their voices anew with every presidential election, and there have been three elections in the last decade allowing for ever greater cries of injustice. The next section will summarize the arguments which have been raised in the last ten years or so, and it will evaluate the validity of these arguments.

The 1970's - The Debate Continues

First Amendment Arguments

Generally, the most persuasive arguments for First Amendment rights which have appeared in law journals are on the side of the public's right

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[19]Lawrence A. Erbst, "Equal Time for Candidates: Fairness or Frustration?" 34 So. Cal. L. Rev. 194 (Winter 1961).

to know. In William Canby's article "The First Amendment Right to Persuade" he begins with the premise that "political speech is necessary for genuine self government."[20] He sees a First Amendment right in pursuing political goals. He is implying that this pursuit may include access to the broadcasting media. He states that if a right to access did not exist "commercial advertisers would prevail, resulting in little more access for advertisements of controversial positions than now exists."[21] As a result of this dominance, he warns that the "poor and poorly financed causes" will be smothered.

Perhaps the more topical observations are put forth by Philip G. Loucks, who suggests arguments for both sides of the First Amendment debate. Loucks reports that 315 has not been considered violative of the First Amendment because of the right to refuse inherent in the statute.[22] However, Loucks also notes the perspective of the broadcasting industry (which he supports). "If the rights of a licensee to communicate are subject to condition via Section 315 this condition may be unconstitutional."[23]

The major barrier to the broadcasting industry laying claim to First Amendment privileges is that U.S. v. Paramount Pictures (cited on page 10 of this paper) has restricted the application to broadcasting, although not in any definitive sense. If broadcasters are ever to gain

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[20]William C. Canby, Jr. "The First Amendment Right to Persuade: Access to Radio and Television," 19 UCLA L. Rev. 725 (1972).

[21]Ibid., p. 755.

[22]This position is no longer quite as clear. Section 312 (a) (7) suggests that repeated violations of the reasonable access provision may result in the revokation of the license.

[23]Phillip G. Loucks, "Section 315," 18 Fed'l Comm. Bar Journal 36 (1963).

respectability as electronic journalists, the court will have to recognize them as full-fledged members of the press -- without the limitations which are presently imposed on them. One of the ways this may come about is via the development and acceptance of technologies which allow for a greater multiplicity of channels which could, in effect, put the electronic press on equal footing with print journalists.

Broadcasters consider having to cover the campaigns of minor candidates as a nuisance. Now that the FCC has adopted the Aspen Institute's proposals as rules,[24] minor candidates are pushed back even further. The ruling (which was adopted by the FCC in September 1975) states that debates and news conferences involving political candidates are exempt from 315 if:

1) They are covered live and in their entirety;
2) If they are not under the control of either the broadcasters or the candidates.

Representative Shirley Chisholm brought suit along with the National Organization for Women and the Office of Communication of the United Church of Christ. The court upheld the FCC, but in a dissenting opinion, Judge J. Skelly Wright asserted:

> If we were to construe the bona fide news exemption as encompassing all coverage of a candidate deemed newsworthy by the licensee, it would mean that the equal opportunities requirement of Section 315 had in effect been repealed.[25]

Wright was also concerned that the FCC has usurped Congress' duty in

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[24]The Aspen ruling goes back to 1962 when the commission held that debates between gubernatorial candidates in Michigan and California . . . did not qualify as bona fide news events. "Editors Choice," Broadcasting, April 19, 1976, p. 74.

[25]"Reinterpretation of equal time passes first court challenge," Broadcasting, April 19, 1976, p. 26.

the matter. At the very least, the ruling adversely affected the equal time rights of the minority and fringe party candidates.

Another result of the Aspen proposals was the heightened indignation of broadcasters over several features of the rule including: the time limitations concerning on-the-spot coverage; the restriction against taking pictures of audience reactions during the debates; and, the control over the debates by a third party. In the first instance, the commission subsequently ruled that delayed broadcasts could be exempt, but only under unusual circumstances. The second complaint is related to the third. Broadcasters felt that third party control over the event was a contrivance and led to such unforeseen problems as the audio failure in the first debate. These complaints have not been seriously addressed.[26] Broadcasters did, however, find some solace in the Aspen rules which, according to a Broadcasting reporter, prevented "every nonentity running for President from being entitled to equal time."[27]

A number of political activists react adamently to the above comment. Joyce Snyder, the coordinator of NOW's media task force, remarked that "without an equal time law, selected politicians and broadcasters would lobby for each other's interests and forge a self-perpetuating establishment at the expense of the have-nots."[28]

Proposals

One of the most idealistic suggestions for alleviating the woes of Section 315 has been to adopt the British method of allocating set blocks

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[26]"How long can news be delayed before it's no longer news?" Broadcasting, October 24, 1977, p. 52; "Silence heard 'round the world," Broadcasting, September 27, 1976, p. 106.

[27]"First things first," Broadcasting, February 21, 1977, p. 102.

[28]Neil Hickey, "Equal Time," TV Guide, May 22, 1976, p. 14.

of free television time to political parties according to the number of votes they received in the last election. This view has been suggested by the idealists of the FCC such as Newton Minnow and Charles Siepmann. The major problem with this notion is that it would still perpetuate the power of the two party system, and tend to ignore the fringe candidates.

Outside of outright repeal, the proposal with the greatest support was the recommendation that the offices of President and Vice President be exempted from Section 315 coverage. The National Broadcasting Company cited this suggestion as the one it liked best second to repeal. The House Communications Subcommittee initiated this proposal in 1970 as a means to facilitate the campaigns of significant candidates. In 1973, Nixon would have vetoed any limitations of the exemption to just the top two candidates,[29] but it was also considered the one proposal which would have least offended members of the house.[30] In 1977, Commissioner Margita White included the exapnded exemption in a package of Section 315 reforms. The FCC passed the notion in a 4 - 3 vote.

The dissenters included Commissioner Benjamin Hooks who feared that the above-mentioned decision gives television the power to elect.[31] The proposals do not have the effect of law, but the premise still has deleterious implications for minor candidates. Charles Compton suggests that "if the right to use this important means of reaching the voters is guaranteed only to the 'substantial' candidate, there would be little

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[29]"Equal Time: A Never-Ending Script," Variety, March 14, 1973.

[30]"Ducking the Issue," Broadcasting, May 16, 1977, p. 82.

[31]"FCC proposes easing of 315," Broadcasting, May 9, 1977, p. 28.

chance for others ever to become 'substantial.'"[32] Part of the intent of Section 315 has been that licensees should grant "equal time without regard to the candidate's chances of success."[33]

Conclusions

If the Equal Time law is to "achieve what it has set out to do" it seems reasonable that all candidates should receive equal opportunities to speak out on the issues. The provisions attached to the law in the past two decades have whittled away at the rights of the fringe candidates to the point where all means of recourse for gaining coverage are covered by exemptions. The two-party system is being foisted upon the government regulations governing broadcasting at the expense of the minority points of view (which we supposedly cherish as part of our democratic system). Throughout this paper, I have made references to the questions posed at the end of the Introduction:

1) The goals that are sought to be achieved by the regulation.
2) The hidden agenda of the regulation.
3) The success of achieving the stated goals.

In the last few pages I have also alluded to what the costs are of the regulation: the muffling of the voice of the minority candidate, and, paradoxically, the incomplete First Amendment privileges of broadcasters. These costs would appear to be dear in light of the importance we place on free speech, especially so with governmental criticism.

It seems evident then, that the regulation is not achieving its original goals, but rather a set of new goals centered on the perpetuation

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[32] Charles S. Compton, Jr., "Appearances on News Programs Excluded From Equal Time Act," 46 Virginia Law Review 574 (April 1960).

[33] Lawrence A. Erbst, "Equal Time for Candidates," 34 So. Cal. L. Rev. 202 (Winter 1961).

of the two-party system. As a result, the answer to the fourth question posed in the Introduction, becomes quite difficult to state. If we look at the original intention of the act, the response to the question of whether or not the goals are furthered by the regulation would have to be negative. If, on the other hand, we take the 1959 amendments and the Aspen rule into account, we would have to acknowledge that the goals have changed over time, but not necessarily following the statutory intent. The 1959 amendments were seen as a means of enhancing rather than detracting from the intent of the 1934 Communications Act, and given that together they constitute present law, we would have to say that the goals of the regulation are not furthered.

This brings us to the last part of the series of questions: "Would these goals be better served by other means?" The answer to this question is highly uncertain given that the mass media are currently undergoing a number of vast changes. I would contend that the inconsistent nature of the statute, along with the infringement on minority rights of access and even the First Amendment rights of broadcasters (which I believe will have to be recognized eventually), Sections 315 and 312 (a) (7) should be repealed. The only hope for minority points of view lies with responsible journalism and a multiplicity of channels for different points of view. Granted this is a rather dubious peg on which to hang our goals, but it is the only option which remains consistent with the Constitution and democratic goals.